

that the Board had improperly required her to have a certificate of inhabitancy completed by the municipal Zoning and Housing official before it would admit her children. She also alleged that the Board had failed to comply with the procedural due process requirements of N.J.S.A. 18A:38-1 and the United States Constitution by not providing written notice of its action and not advising her of the right to appeal to the Commissioner. She further alleged that the Board had violated the children's right to a thorough and efficient education under the New Jersey Constitution.

The matter was transmitted to the Office of Administrative Law, and a hearing was held on December 1, 1999. Following the hearing, counsel for petitioner filed a motion to amend the petition to include additional legal claims. On January 24, 2000, the Administrative Law Judge ("ALJ") denied the motion on the grounds that it was untimely.

On July 21, 2000, the ALJ issued his initial decision. The ALJ rejected petitioner's characterization of the Board's actions as denying the children admission to the district's schools. Based on his factual findings and finding that the testimony of the Board's registrar was more accurate and credible than that of petitioner and her sister, the ALJ determined that there was no denial of admission, but rather that registration and enrollment were delayed primarily pending receipt of satisfactory proof of residency. The ALJ concluded that in the absence of a denial of admission, there was no violation of N.J.S.A. 18A:38-1, which requires that a district board of education must notify a resident in writing of his right to contest the board's decision to deny a child admission to the district's schools. The ALJ further concluded that the Board had been to some extent dilatory when it delayed processing petitioner's application for enrollment for five

or six school days, but that petitioner had contributed to the delay by not furnishing satisfactory proof of residence in a timely fashion. He also found that the certificate of inhabitancy should not have been any part of the registration process, but that petitioner's inability to obtain compliance was not the cause of the delay in registration.

After considering all of the facts and circumstances, the ALJ concluded that the actions of the Board's personnel were not arbitrary, capricious, or unreasonable. He rejected petitioner's claim for compensatory education, finding that she had not proven that the children were educationally harmed by the relatively short delay in enrollment and that she had failed to prove any harm that might entitle her to damages. He found that petitioner's demands relating to the children's eligibility and admission to school were moot since they had been admitted to school on December 2, 1998.

The Commissioner agreed with the ALJ that it was improper for completion of the certificate of inhabitancy to be required as part of the registration process and directed that it be totally omitted from the process. The Commissioner, however, determined that the certificate of inhabitancy contributed more to the delay in enrollment than conveyed by the ALJ. The Commissioner found that it was not appropriate for enrollment to be delayed on the basis of incomplete transcripts in that student transcripts relate to a student's educational placement rather than eligibility to enroll and be admitted to school. The Commissioner also found that although incomplete immunization records may delay actual admission to school, they may not interfere with enrollment. The Commissioner therefore directed that the district could not permit the absence or incompleteness of transcripts and immunization records to interfere with the enrollment of a new student. He also directed the County Superintendent to review the

District's enrollment policies and procedures. The Commissioner denied all other relief sought by the petitioner, including amendment of her petition.

Petitioner appealed to the State Board of Education seeking reversal of that part of the Commissioner's decision which declined to rule on her claim that the Board's actions in this case violated her procedural due process rights under the Fourteenth Amendment of the United States Constitution. Petitioner continues to characterize the Board's action as a denial of admission and exclusion from school and, on the basis of that characterization, claims that the Board violated her constitutional rights by denying admission without providing procedural due process as required by the Appellate Division's decision in J.A. v. Bd. of Educ. for South Orange, 318 N.J. Super. 515 (App. Div. 1999). Again relying on that decision, she further argues that her constitutional claim was not rendered moot by the fact that the school law claim has been resolved by the children's admission to school.

The Board cross-appealed, seeking reversal of the Commissioner's determination that it delayed enrolling petitioner's children because of incomplete transcripts and immunization records. It also appeals from the Commissioner's directive that the County Superintendent review its admission policies and procedures and his directive that parents be immediately informed of the administrator to contact when they experience enrollment delays.

Initially, we concur with petitioner that although her children have been admitted to school, her appeal is not moot. We recognize that in contrast to the situation in J.A. v. Bd. of Educ. for South Orange, supra, the Board in this case has never contested the eligibility of petitioner's children to attend the district's schools. However, like the

petitioner in that case, petitioner herein is demanding relief beyond a confirmation of her children's eligibility to attend school in the district. Id. at 518. Similarly, petitioner in this case is also claiming that her due process rights have been violated and is entitled to have that issue decided. Id.

At first glance, there appears to be merit to the legal argument made by petitioner. The Appellate Division's decision in J.A. v. Bd. of Educ. for South Orange, supra, did hold that an administrative decision excluding anyone with a bona fide claim to domicile in a district from the schools of such district is subject to the requirements of procedural due process. 318 N.J. Super. at 523.

There is, however, a major distinction between J.A. v. Bd. of Educ. for South Orange and the case now before us. In stark contrast to J.A. v. Bd. of Educ. for South Orange, which arose from an express determination by the school district to deny admission to the student in that case, the matter now before us does not involve a denial of admission or an exclusion from school. Rather, as found by the ALJ, the pivotal event in this case was a delay in enrollment.

Moreover, as set forth in the ALJ's initial decision, the circumstances surrounding the delay from November 16 until December 2 were not such as to render it a denial of admission. As found by the ALJ, enrollment was delayed in this case for a period of five or six school days because the information submitted as proof of residence was incomplete. Initial Decision, slip op. at 11-12. Specifically, such proof was not submitted until December 2, at which time petitioner submitted a letter from the landlord verifying her residence. Id. at 12.¹ While we concur with the Commissioner that it was

¹ We note that the Commissioner found that the record did not satisfactorily establish why the children were not enrolled "upon presentation of the landlord's letter of verification in late November."

improper for the Board to require that a certificate of inhabitancy be completed as part of its registration process and agree that petitioner should not have been put in the position of having to make several visits to the West Orange Zoning and Housing Authority, we find, as did the ALJ, that petitioner's failure to obtain approval of the certificate of inhabitancy was not the cause of the delay. Id. at 13. This conclusion is well supported by the testimony of Josefa Lopez, registrar for the West Orange Board, who, as the ALJ pointed out, testified extensively and credibly that the delay was attributable to the fact that petitioner did not have sufficient proof of residency, rather than the fact that she had not submitted a completed certificate of inhabitancy. To reach any other conclusion would require us to engage in speculation as to what might have occurred had petitioner presented sufficient proof of residency prior to December 2. This we decline to do.

Given the facts of this case, there is no merit to petitioner's claim that her right to procedural due process was violated. Again we stress that J.A. v. Bd. of Educ. for South Orange, supra, involved a denial of admission rather than a delay in enrollment. Again, the length of the delay and the surrounding circumstances in this case were not such as to warrant characterizing it as a constructive denial of admission. In that there was no determination to deny admission, it is difficult to conceive how a hearing could have been conducted to resolve that issue. See J.A. v. Bd. of Educ. for South Orange, supra at 523-24 (exclusion from school is subject to the requirements of procedural due process). Nor could the Board have provided petitioner with a statement of the reasons

Commissioner's Decision, slip op. at 28. However, as set forth in the ALJ's initial decision, the letter from petitioner's landlord verifying residency, although dated November 10, was not submitted to the registrar until December 2. Initial Decision, slip op. at 12.

supporting a determination that it had not made. See id. at 524 (due process requires that a board must inform student of the grounds for its decision to exclude her).

We fully agree with the ALJ and the Commissioner that the Board in this case should have moved with greater dispatch to enroll petitioner's children in school. We also agree with the Commissioner that, like any district, this district's policies and procedures for enrolling new students should assure that residency forms are easily understood and appropriate, that parents are informed of an administrator to contact if they experience delays or difficulties in enrollment, and that decisions on enrollment are issued expeditiously and that appeal rights are communicated to the parents. Given the Commissioner's responsibility for the supervision of New Jersey's public schools, N.J.S.A. 18A:4-23, and the role of the county superintendent, N.J.S.A. 18A:7-1 et seq., we find it entirely appropriate that the Commissioner directed the County Superintendent in this instance to review the Board's policies and procedures to ensure that they included these guarantees, and we reject the Board's cross-appeal in this respect.²

Further, like the ALJ and Commissioner, we find that inclusion of the certificate of inhabitancy in the Board's registration packet was inappropriate and affirm the Commissioner's determination that such practice must be discontinued. We also agree with the Commissioner that the Board must not allow incompleteness of transcripts and immunization records to interfere with the enrollment of a new student. However, as set forth above, we, like the ALJ, find that the delay in enrollment was primarily attributable to the fact that petitioner did not provide proof of residency until December 2 rather than

² We consider inclusion of these guarantees in the enrollment procedures followed by district boards to be of such importance that we proposed regulations to codify them on July 10, 2001. 33 N.J.R. 2790(a).

the failure to complete the certificate of inhabitancy or the incompleteness of transcripts and immunization records. Initial Decision, slip op. at 11-13 and 15-16.

Hence, for the reasons expressed, we reject petitioner's due process claims and, as modified herein, affirm the Commissioner's decision in this case.

Attorney exceptions are noted.

Kathleen A. Dietz abstained.

January 2, 2002

Date of mailing _____